



To the Honorable Council
City of Norfolk, Virginia

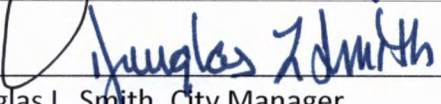
May 14, 2019

From: Stephen E. Kirkland, Executive Director
Nauticus Foundation

Subject: Agreement between the City
of Norfolk and Nauticus Foundation

Reviewed: 
James A. Rogers, Deputy City Manager

Ward/Superward: 2/6

Approved: 
Douglas L. Smith, City Manager

Item Number:

R-06

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** City of Norfolk
Nauticus Foundation
One Waterside Drive
Norfolk, Virginia 23510

III. **Description:**
This agenda item is an ordinance authorizing an agreement between the City of Norfolk (the "City") and Nauticus Foundation ("Nauticus") for the operation of the Nauticus Campus.

IV. **Analysis:**
Section 15.2-1800 (E) of the Code of Virginia allows a locality to contract with others for the operation, maintenance and regulation of use of its real property. By mutual effort, the City and Nauticus promote and support the operation of the Nauticus campus. The City desires to enter into an agreement to have Nauticus operate the facilities including the Nauticus Museum, the Peter G. Decker Jr. Half Moone Center, the Sail Nauticus marina, and the Battleship Wisconsin as part of the Nauticus campus. The term of the agreement is for one year beginning on May 1, 2019 and ending on April 30, 2020 with an automatic renewal of up to four consecutive one-year terms.

V. **Financial Impact:**
N/A

VI. **Environmental:**
N/A

VII. Community Outreach/Notification:

Public notification for this agenda item was conducted through the City's agenda notification process.

VIII. Board/Commission Action:

N/A

IX. Coordination/Outreach:

This letter and ordinance have been coordinated with the City Attorney's Office and the Nauticus Foundation.

Supporting Material from the City Attorney's Office:

- Ordinance
- Exhibit A - Agreement

04/23/2019 1sb

Form and Correctness Approved: *RAP*

By *[Signature]*
Office of the City Attorney

Contents Approved:

By *[Signature]*
DEPT.

Pursuant to Section 72 of the City Charter, I hereby certify that the money required for this item is in the city treasury to the credit of the fund from which it is drawn and no appropriated for any other purpose.

The Foundation will retain revenue estimated at

\$ 1,500,000 N/A
Account

[Signature] 5/13/19
Director of Finance Date

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE AUTHORIZING THE AGREEMENT TO BE ENTERED INTO WITH THE NAUTICUS FOUNDATION FOR THE OPERATION OF THE NAUTICUS CAMPUS, WHICH INCLUDES THE NAUTICUS MUSEUM, THE PETER G. DECKER, JR. HALF MOONE CRUISE TERMINAL, THE SAIL NAUTICUS MARINA AND THE BATTLESHIP WISCONSIN.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Agreement between the City of Norfolk and the Nauticus Foundation for the operation of the Nauticus Campus is hereby authorized.

Section 2:- That the City Manager is hereby authorized to negotiate and execute an agreement with the Nauticus Foundation, substantially in the same form and terms as in the attached Agreement, satisfactory to the City Attorney and consistent with this ordinance.

Section 3:- That this ordinance shall be in effect from and after the date of its adoption.

ATTACHMENT:

Exhibit A (7 pages)

EXHIBIT A

**AGREEMENT
BETWEEN
THE CITY OF NORFOLK, VIRGINIA
AND
THE NAUTICUS FOUNDATION**

This Agreement entered into this _____ day of _____, 2019, by and between the **CITY OF NORFOLK** ("City"), a municipal corporation of the Commonwealth of Virginia, and the **NAUTICUS FOUNDATION** ("Foundation"), a Virginia tax exempt corporation with its address at One Waterside Drive, Norfolk, Virginia 23510.

WHEREAS, the Code of Virginia, in section 15.2-1800 (E) allows a locality to contract with others for the operation, maintenance, and regulation of use of its real property; and

WHEREAS, the City and the Foundation strive to work together for the smooth operation of the Nauticus campus; and

WHEREAS, the City desires to have the Nauticus Foundation operate the facilities enumerated below as part of the Nauticus campus; now, therefore,

WITNESSETH:

In consideration of the mutual efforts of the City and the Foundation to promote and support the operation of the Nauticus campus, which includes the Nauticus Museum, the Peter G. Decker Jr. Half Moone Center, the Sail Nauticus marina, and the Battleship Wisconsin, and for other valuable consideration, the City and the Foundation agree as follows:

I. Services of Foundation.

The Foundation will provide such services as agreed upon between the City and the Foundation including the following:

- (a) fundraising, marketing, facility rentals, exhibitions, programming, gift shop operation, restaurant management and management of catering services;
- (b) acquiring all licenses, permits and other approvals necessary to operate the Nauticus campus;
- (c) partial staffing of the facilities of the Nauticus campus as agreed to with the City.

II. City Functions.

The City will retain all functions not delegated to the Foundation.

III. Term and Renewals.

The term of this Agreement is for a year beginning on May 1, 2019 and ending on April 30, 2020. This Agreement will automatically renew for up to four consecutive one-year terms unless terminated as provided in section XI of this Agreement.

IV. Consideration.

As compensation for services rendered under this Agreement, the Foundation will retain the revenue realized from the following: gift shop revenue, revenues from the rental of Nauticus, the Peter G. Decker Half Moone Cruise Terminal and the Battleship Wisconsin. Revenues are estimated to be approximately One Million Five Hundred Thousand Dollars (\$1,500,000). Revenues will be used exclusively for the operation of the Nauticus campus.

V. Expenditures.

The City will be responsible for all capital improvements and major infrastructure costs to be incurred at the City's sole discretion. All expenditures are subject to appropriation and authorization to expend by the City Council. The Foundation shall not undertake any major structural or construction work on any of the Nauticus campus facilities, nor shall it incur any non-routine expenditures without prior written consent from the City Manager or his designee.

VI. Taxes.

All taxes received or owed by the Foundation shall be remitted to the City within ten (10) days of receipt or by the date due.

VII. Accounting.

The Foundation shall keep books of control and account in accordance with generally accepted accounting principles. The Foundation will provide the City's Director of Budget and Strategic Planning with quarterly reports of Profit and Loss covering the operation of the Nauticus campus.

VIII. Audit.

A certified public accountant shall perform an annual audit of all funds received, held, administered or expended by the Foundation, at the expense of the Foundation. The form and content of the audit shall be consistent with City policy as directed by the City's Director of Finance. Upon receipt, copies of the audit shall be provided to the Finance Department and the Office of Budget and Strategic Planning.

IX. Insurance.

The Foundation shall maintain during the term of this Agreement insurance of the types and in the amounts described below:

(a) Commercial General Liability with a limit of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

(b) Public liability insurance policies and hull insurance policies on an "as needed" basis to cover the Foundation's various nautical and marine operations and activities not included in other insurance requirements of this Agreement. The policy limits and specific forms of such marine insurance shall be determined in coordination with the City's Risk Manager.

(c) Worker's Compensation insurance, providing coverage as required by applicable Federal and/or State statutes, and Employer's Liability Insurance with limits of not less than \$500,000 per accident/disease.

(d) Automobile Liability Insurance covering automobiles owned or leased by the Foundation and used in the activities performed under this Agreement, with limits of not less than \$1,000,000 combined single limit; and Bodily Injury \$500,000 each person, \$1,000,000 each accident, and Property Damage \$100,000 each accident.

(e) Crime Insurance /bonds covering theft, embezzlement, disappearance and destruction of money, computer fraud, and employees' dishonesty which arise from the performance of work under this Agreement with limits of not less than \$100,000 each incident/annual aggregate.

All general liability and automobile/vehicle liability policies will be written in approved ISO form for coverage in the Commonwealth of Virginia. Coverage limits may be provided via singular policies or combinations of primary and excess or umbrella insurance. The City of Norfolk and its officers, employees, agents and representatives will be named as "Additional Insured" on the general liability and automobile liability policies.

X. Review/Report.

This Agreement shall be subject to annual review and the appropriation of annual funding by City Council. The Foundation shall provide an annual budget estimate by January 31 leading into each fiscal year during the term of this Agreement for review by the City.

XI. Termination.

This Agreement may be terminated by either party by giving ninety (90) days written notice to the other party.

XII. Indemnification.

The Foundation agrees to indemnify and save harmless the City of Norfolk, Virginia and its Officers, employees, agents and representatives from and against losses and claims, demands, suits, actions, payments and judgments, including any and all expenses, legal and otherwise, incurred by the City or its representatives in the defense of any claim or suit brought or recovered against the City as a result of the negligent performance of the Foundation, its agents, servants or employees, under this Agreement.

XIII. Notices.

Notices and communication required to be given pursuant to this Agreement shall be given by certified mail addressed as following:

TO THE CITY: Director of Budget and Strategic Planning
 City Hall Building – 6th Floor
 810 Union Street
 Norfolk, VA 23510

With copy to: City Attorney
 City Hall Building – 9th Floor
 810 Union Street
 Norfolk, VA 23510

TO THE FOUNDATION: President
 Nauticus Foundation
 One Waterside Drive
 Norfolk, Virginia 23510

XIV. Independent Contractor.

It is expressly understood and agreed by the parties that the Foundation is an independent contractor and that officers, employees, agents and representatives of the Foundation shall not be considered to be employees of the City for any purpose whatsoever, except as described in subparagraph (b) below.

(a) CITY AND FOUNDATION EMPLOYEES: The Foundation shall be responsible for the total compensation of all employees on its payroll and the City shall be responsible for the total compensation of all employees on its payroll.

(b) MARITIME CENTER DIRECTOR. To the extent that such duties for the Foundation do not interfere with City duties, the Maritime Center's Director will serve as the President and Chief Executive Officer of the Foundation without being on the payroll of the Foundation, will attend all board meetings, will serve on its executive committee and other committees as necessary and be responsible for the development of and adherence to a budget for the Foundation. The Maritime center Director is a City employee who serves as the Chief Executive Officer of the Foundation for no additional compensation.

XV. Non-Discrimination.

The Foundation will comply and will require all suppliers and subcontractors paid in whole or in part from funds made available under the Agreement to comply with Section 122 (a) of the State and Local Fiscal Assistance Act of 1972 (Pub. L. 92-512), as amended, to-wit:

No person in the United States shall, on the grounds of race, color, handicap, national origin, or sex be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity of a State government or unit received funds made available under Subtitle A (of Title I of the Act).

Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, shall also apply to any such program or activity.

Any prohibition against discrimination on the basis of religion, or any exemption from such prohibition, as provided in the Civil Rights Act of 1964 or Title VIII of the Act of April 11, 1968, shall also apply to any such program or activity.

Further, the Foundation will comply with Section 33.1-53 of the Code of the City of Norfolk, Virginia, as amended, 1979, regarding prohibited employment discrimination.

XVI. Compliance with Immigration Law.

The Foundation does not and shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

XVII. Compliance with State Law/Authorization to Transact Business in The Commonwealth.

The Foundation hereby represents that it is organized as a non-stock corporation and is authorized to transact business in the Commonwealth as a domestic business entity as required by Title 13.1 of the Code of Virginia.

IN WITNESS WHEREOF, the City and the Foundation have caused this Agreement to be executed by their duly authorized officers.

CITY OF NORFOLK

Douglas L. Smith, City Manager

ATTEST:

City Clerk

Date

NAUTICUS FOUNDATION

By _____
Print Name:
Print Title:

CONTENT APPROVED:

Director, Budget and Strategic Planning

FORM AND CORRECTNESS APPROVED:

Deputy City Attorney

CERTIFICATE OF FUNDING

I hereby certify that the money required for this Agreement is in the City Treasury to the credit of the fund from which it is to be drawn and not appropriated for any other purpose.

Account: _____

Amount: _____

Vendor Code: _____

Contract No.: _____

Director of Finance

Date